FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 24 1948
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 619

AYRSHIRE COLLIERIES CORPORATION, BIG BEN COLLIERIES, INC., BIRCH CREEK COAL COMPANY, INC., ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

STATEMENT AS TO JURISDICTION

EARL B. WILKINSON,
J. ALFRED MORAN,
CARSON L. TAYLOR,
J. E. GOGGIN,
Counsel for Appellants.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Jurisdiction	2
Statutes involved	3
Date of decree and date application for appeal was presented	3
The nature of the cause and rulings of the District Court	3
Cases sustaining jurisdiction	9
The questions involved are substantial	9
Appendix "A"—Judgment of the District Court	15
Appendix "B"—Memorandum opinion	16
Appendix "C"—Findings of fact and conclusions of law	20

Table of Cases Cited

Ayrshire Collieries Corp., et al. v. *U. S.*, 331 U. S. 132	8
I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois, 263 I. C. C. 179	
New York, et al. v. *U. S.*, 331 U. S. 284	9
Texas & Pacific Ry. Co. v. *U. S.*, 289 U. S. 627	9
United States v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499	9, 13
United States v. *Hancock Truck Lines, Inc.*, 324 U. S. 774	9
Youngstown Sheet & Tube Co. v. *United States*, 295 U. S. 475	9

Statutes Cited

Interstate Commerce Act, Sections 2, 3(1), 13, 15(1) and 15(7)	3

United States Code Annotated, Title 28: Page

Title 41 3
Title 43 to 48 3
Title 44 2
Title 47(a) 2
Title 345(4) 2

Urgent Deficiencies Act of October 22, 1913, U. S. Code, Title 28, Sec. 47 8

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

No. 1072, Civil

AYRSHIRE COLLIERIES CORPORATION,
A CORPORATION, ET AL.,
Plaintiffs,

vs,

UNITED STATES OF AMERICA,
Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants

No. 1076, Civil.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, the plaintiffs in the above entitled consolidated causes submit herewith their statement

disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree and order of the District Court entered in the above entitled consolidated causes on November 28, 1947.

I

Jurisdiction

The statutory provisions believed to sustain the jurisdiction of the Supreme Court to review by direct appeal the final decree and order entered in these consolidated causes are contained in the United States Code, Title 28, Sections 44, 47a, and 345(4), and particularly the following provisions thereof:

> "Section 345. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise:
>
> * * * * * * *
>
> "(4) So much of sections 47 and 47a of this title as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money." (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938.)
>
> "Section 47a. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. * * * (36 Stat. 1150; 38 Stat. 220.)

These causes, being actions "to enjoin, set aside, annul or suspend in whole or in part" an order of the Interstate Commerce Commission, are cases "specified in section 44 of this title."

II

Statutes Involved

The validity of a statute of a State, or a statute or treaty of the United States, is not involved.

The principal statute involved is the Interstate Commerce Act, and particularly Sections 2, 3 (1), 15 (1) and 15 (7) thereof. (U. S. Code, Title 49, Sections 2, 3 (1), 15 (1) and 15 (7).)

III

Date of Decree and Date Application for Appeal Was Presented

The final decree and order sought to be reviewed was entered on November 28, 1947, and the petition for appeal was presented on January 21, 1948. An order allowing the appeal was entered January 21, 1948.

IV

The Nature of the Cause and Rulings of the District Court

These are two suits brought in the United States District Court for the Southern District of Indiana, Indianapolis Division, under the provisions of the U. S. Code, Title 28, Sections 41 and 43 to 48, inclusive, seeking a review of and a final decree setting aside, annulling and enjoining an order of the Interstate Commerce Commission entered July 9, 1945, in a proceeding before it entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois." The Commission's Report is printed in 263 I.C.C. 179-226.

Civil No. 1072 was brought by the Ayrshire Collieries Corporation and twenty-three (23) other corporations and individuals operating coal mines in the State of Indiana and the Coal Trade Association of Indiana, whose members are the other plaintiffs and certain other operators of coal mines in Indiana. Civil No. 1076 was brought by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which is a common carrier engaged in the transportation of coal from mines in Indiana, subject to the provisions of the Interstate Commerce Act.

The proceeding before the Commission was instituted by its order of July 30, 1942, issued upon a protest and request for suspension filed with the Commission on July 16, 1942, by the Coal Trade Association of Indiana, one of the plaintiffs in Civil No. 1072, on behalf of its members, requesting the suspension of and an investigation into the lawfulness of certain new rates published to become effective August 2, 1942, and later, for the transportation of coal from mines in Indiana to Rockford, Illinois, and some seventy other destinations in northern Illinois in the vicinity of Rockford, and Beloit, Wisconsin. All new rates published by the carriers serving mines in Indiana were increased by the same amounts to the same destinations in northern Illinois. No new rates to Beloit, Wisconsin, were published by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called "the Milwaukee," via its direct lines, or by the Southern Railway Company from mines on its lines or from mines on the line of the Algers, Winslow & Western Railroad Company, with which the Southern connects.

The carriers serving mines in Illinois and western Kentucky filed schedules of new interstate rates from mines in Illinois and western Kentucky to Rockford, Illinois, and other destinations in northern Illinois, increasing the existing rates generally but not uniformly by the same amounts

as the rates from Indiana were increased. The Illinois carriers published no new rates from mines in Illinois to Beloit, Wisconsin.

The carriers serving Illinois mines also filed with the Illinois Commerce Commission schedules of new increased intrastate rates from mines in Illinois to destinations in northern Illinois, which new rates increased the existing intrastate rates generally, but not uniformly the same amount as the interstate rates were increased, except that in some instances the new intrastate rates were lower than existing rates. The Illinois Commerce Commission suspended the new intrastate rates and entered upon a hearing concerning their lawfulness.

The Interstate Commerce Commission, proceeding under Section 15 (7) of the Interstate Commerce Act, entered its order of July 30, 1942, by which it instituted the hearing and investigation into the lawfulness of the new increased interstate rates stated in the schedules published by the carriers serving mines in Indiana, Illinois and western Kentucky and suspended the operation of said schedules, which proceeding it entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois."

Subsequent to the Commission's order of July 30, 1942, carriers serving mines in Illinois filed a complaint with the Commission under Section 13 of the Interstate Commerce Act alleging that the rates on coal moving in intrastate commerce within Illinois were unduly preferential and prejudicial as between persons and localities in intrastate and interstate commerce and unjustly discriminatory against interstate commerce. Upon this complaint the Commission on September 9, 1942, ordered an investigation and hearing into the lawfulness of the Illinois intrastate rates and this proceeding was entitled "Docket No. 28881, Bituminous Coal Rates within Illinois."

Hearings in the proceeding "I. & S. Docket No. 5139,

Coal to Beloit, Wis., and Northern Illinois," and the proceeding "Docket No. 28881, Bituminous Coal Rates within Illinois," and two cases pending before the Illinois Commerce Commission, were held upon a common record before an Examiner of the Interstate Commerce Commission and representatives of the Illinois Commerce Commission. Thereafter, on July 9, 1945, the Interstate Commerce Commission filed its Report covering both said proceedings before it and entered its order in I. & S. Docket No. 5139, which order is the subject of this appeal.

In its Report the Commission made certain findings and upon the basis thereof concluded that the existing and proposed new rates from mines in Indiana to northern Illinois destinations, as published in the tariffs filed by the carriers, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central Railroads, in violation of Section 2 of the Interstate Commerce Act, and in undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of Section 3 (1) of said Act, in and to the extent that such rates reflect or would reflect rate relations between such districts, and between the points in each of those districts, to the representative destinations which differed from the relations reflected by the rates and the rate bases set forth as approved in the Commission's Report.

Based on that Report, the Commission entered the order in I. & S. Docket No. 5139, dated July 9, 1945, which is here under review. In said order the Commission recites that "the suspended schedules have not been justified because certain of the proposed rates on bituminous coal from Indiana and Western Kentucky rate groups to points in northern Illinois and to Beloit, Wis., would be unreasonable, unjustly discriminatory, or unduly prejudicial or preferen-

tial, as indicated in said report," and that "certain of the present rates from Indiana and western Kentucky rate groups to points in northern Illinois are unjustly discriminatory and unduly prejudicial and preferential in and to the extent indicated in said report." By its order the Commission required the carriers to cancel the proposed schedules involved in I. & S. Docket No. 5139, "without prejudice to the establishment of rates on the bases approved" in the Commission's Report. The order did not direct or require the carriers to publish the rates approved by the Commission. The order further required the carriers, "according as they participate in the transportation, * * * (1) to cease and desist from practicing the unjust discrimination under Section 2 of the Interstate Commerce Act and the undue prejudice and preference under Section 3 (1) of said Act, found in said Report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference." This part of the Commission's order was directed to and could affect only the existing rates.

Plaintiffs filed petitions with the Commission praying that it reopen, rehear and reconsider the proceedings out of which said Report and order in I. & S. Docket No. 5139 issued, which petitions were denied by the Commission by order entered November 13, 1945.

Whereupon, plaintiffs in the above entitled causes filed their petitions in the United States District Court for the Southern District of Indiana, Indianapolis Division, seeking a review of and to enjoin and set aside, in whole or in part, the order of the Commission of July 9, 1945. A Court of three judges was convened to hear and determine the matter. By order of said Court the cause in Civil No. 1072 and the cause in Civil No. 1076 were consolidated for all purposes. Hearing was had in said consolidated causes by the three-judge Court on April 22, 1946, at which hearing

the complete record before the Commission and certified copies of the suspended tariff schedules were received in evidence. The Court made findings of fact and conclusions of law and entered a final decree and order on June 5, 1946, dismissing the plaintiffs' petitions.

An appeal was taken to the Supreme Court of the United States from the final decree and order of June 5, 1946. The Supreme Court noted probable jurisdiction on October 21, 1946. The matter was taken on briefs and oral arguments on April 8, 1947, and the Supreme Court rendered its decision on April 28, 1947, vacating the order of the District Court entered June 5, 1946, for the reason that the determination of the District Court was made by only two judges and not by three judges as required under the provisions of the Urgent Deficiencies Act of October 22, 1913, U. S. Code, Title 28, Section 47. The Supreme Court, under the circumstances, did not review the Commission's order and Report or the record before the District Court, but suggested "that the District Court be reconvened in accordance with the Act so that three judges may hear and determine the application to enjoin the Commission order in issue." *Ayrshire Collieries Corporation, et al.*, v. *United States*, 331 U. S. 132, 144.

Another three-judge District Court was convened and hearing on the petitions in the above consolidated causes was had before it on September 22, 1947. At this hearing the complete record before the Commission and certified copies of the various suspended tariff schedules were received in evidence. The Court made and filed its findings of fact and conclusions of law, together with a memorandum, and entered a final decree and order on November 28, 1947, dismissing the plaintiffs' petitions. (See Appendix A attached hereto.)

The District Court concluded that the findings of the Commission were supported by substantial evidence and

that the prayer of the plaintiffs must be denied and the suits dismissed. No formal opinion was filed by the Court.

V

Cases Sustaining Jurisdiction

Texas & Pacific Ry. Co. v. *United States*, 289 U. S. 627;

United States v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499;

United States v. *Hancock Truck Lines, Inc.*, 324 U. S. 774;

New York, et al. v. *United States*, 331 U. S. 284;

Youngstown Sheet & Tube Co. v. *United States*, 295 U. S. 476.

VI

The Questions Involved Are Substantial

The questions raised by the assignment of errors submitted herewith are substantial, because they are of general public interest as well as of great financial interest to the plaintiffs in both of the consolidated causes. It is believed that many of the questions have not been decided by the Supreme Court.

Among the questions involved is the scope of the Commission's authority and jurisdiction in an investigation and suspension proceeding under Section 15(7) of the Interstate Commerce Act; *i. e.*, whether in such a proceeding the Commission has any authority and jurisdiction and, if so, the extent of its jurisdiction and authority (a) over existing rates proposed to be changed by the schedules under suspension and the subject of the investigation, and (b) over existing rates not proposed to be changed by any of the schedules under suspension and subject to investigation. In this case the Commission has ordered cancelled the

schedules of new increased rates without prescribing any rates in lieu thereof. The Commission order then proceeds to require changes in existing rates, at least some of which were not proposed to be changed by the cancelled schedules. There is thus presented the question of whether the Commission has jurisdiction and authority in an investigation proceeding concerning the lawfulness of the schedules of new rates to enter an order requiring the cancellation of such schedules of new rates and also requiring the carriers to cure alleged discrimination and prejudice and preference in the existing rates. It is believed that the Supreme Court has not heretofore construed Section 15(7) of the Act or decided the questions thus raised on this appeal.

The Commission has made an ultimate finding or conclusion that the existing and proposed new rates of certain of the carriers serving Indiana mines result or would result in undue prejudice and preference, in violation of Section 3(1) of the Interstate Commerce Act, without making any finding (a) of injury or advantage resulting from said allegedly unlawful rates, or (b) that the carriers involved in the alleged discrimination have any common control over or are responsible for the rates involved, and (c) has ordered the removal of the undue prejudice and preference found to exist without according the carriers involved the alternative of increasing the rates found to be preferential or decreasing the rates found to be prejudicial. The order of the Commission purports to require that the existing rates from the Boonville and Princeton groups in Indiana be on a parity. There is no evidence and the Commission does not find that the higher rates from the Boonville group are excessive or unreasonable, that the differential in rates between the Princeton and Boonville groups, which differential has existed for a long time, results in any prejudice to shippers and receivers of coal from Boonville or any preference to shippers and receivers of coal from Princeton.

The determination of unlawfulness in any respect of the rates from and between the Boonville and Princeton groups, in the light of this record, presents a substantial question for review by the Supreme Court. It is believed that the determination of the Commission departs from the long-standing interpretation of Section 3(1) of the Interstate Commerce Act as construed by the Supreme Court.

The Commission also concluded that the existing and proposed new rates of certain carriers serving Indiana mines result or would result in unjust discrimination, in violation of Section 2 of the Interstate Commerce Act. The Commission thus concludes, for example, that the rate of the Milwaukee applicable over its single-line route from West Clinton, Indiana, to Rockford, Illinois, a distance of 228 miles, is unjustly discriminatory, in violation of Section 2 of the Act, because lower than the rate of the Pennsylvania Railroad applicable over the joint-line route of the Pennsylvania and Milwaukee from Center Point, Indiana, to Rockford, Illinois, a distance of 283 miles. Section 2 of the Act prohibits the charging of one shipper a greater or less compensation than another for a "like and contemporaneous service * * * under substantially similar circumstances and conditions * * *." The Commission did not find, as indeed it could not on the evidence of record, that the transportation of coal via the Milwaukee from West Clinton to Rockford was the performance of "a like and contemporaneous service * * * under substantially similar circumstances and conditions" as that involved in the transportation of coal from Center Point to Rockford via the joint-line route of the Pennsylvania. The conclusion of the Commission is not supported by an essential preliminary finding in its Report that the carriers found to be responsible for the discrimination had transported or were engaged in transporting coal from the same origins to the same destinations and over the same routes involved in the

transportation service for which higher rates were charged. The District Court specifically found that the allegedly discriminatory rates applied from different origin points via different routes, some routes being 50 to 100 miles longer than the routes of the carriers alleged to be guilty of discrimination. In this instance there is involved both the question of the absence of an essential finding in the Report to support the conclusion of the Commission and a specific finding by the District Court which is inconsistent with and which precludes the conclusion that the rates involved were violative of Section 2 of the Interstate Commerce Act. Yet the District Court affirmed the Commission order. The decree of the District Court and the Report and order of the Commission in this respect plainly should be accorded a full and complete review.

The Commission has approved rates to a number of destinations in Illinois upon the basis of the average of the rates to certain selected destinations. The carriers, shippers and receivers of coal are entitled to reasonable and lawful rates from each origin to each destination involved. A finding that the average of the rates from the Brazil district in Indiana to twelve destinations in northern Illinois is on the same level as the average of the approved rates from the Springfield district to the same twelve destinations, does not establish that any of the rates from any of the origins in the Brazil district in Indiana to any of the twelve destinations used are lawful. Such "unsifted averages" (330 U. S. 567, 583) are no support for a finding that the rates approved from Brazil to Rockford, Illinois, for example, are reasonable, non-discriminatory, non-prejudicial and non-preferential. The action of the Commission in this respect is purely arbitrary and affords no basis for the order approving the rates set forth in the Report.

There are other substantial questions involved in this appeal. Certain of the preliminary findings contained in

the Commission's Report are in conflict with the conclusions and order of the Commission. Whether the conclusions and order of the Commission are thus arbitrary and not predicated upon a rational basis is a substantial question, especially so where the order of the Commission materially and adversely affects the sale and transportation of hundreds of thousands of tons of coal annually from mines in Indiana to the important consuming markets in northern Illinois. The order would deprive the plaintiff coal producers of their ability to compete in these markets and would deprive the plaintiff railroad of the revenues derived from transporting coal that might be sold there by the plaintiff coal operators.

There is involved also the question of the right of the Milwaukee Railroad to initiate and maintain such rates from the mines it serves in Indiana as it deems proper unless and until the Commission shall find, after full hearing and upon substantial evidence in a proceeding instituted by an order of the Commission for an investigation and hearing concerning the lawfulness of such rates, that such rates violate some provision of the Interstate Commerce Act. In this instance the Milwaukee, since the decision of the Supreme Court in *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, affirming its right to do so, has maintained lower rates from mines on its lines to destinations on its lines in northern Illinois than are published and maintained by other carriers serving mines in the same general locality in Indiana. The question specifically whether the lower single-line rates of the Milwaukee are in violation of any provision of the Interstate Commerce Act is substantial and of vital importance to the Milwaukee Railroad. The fact that other carriers serving origins in the same general area publish higher rates on which almost no coal moves to the destinations in northern Illinois, is no reason why the Milwaukee should be compelled to publish and

maintain rates on the same level and on which it would ship substantially less coal. The effect of the Commission's order is to require all the carriers serving various and different origin points in an area of wide extent to charge the same rates by every route from each of those origins to a given destination, irrespective of the differing traffic and transportation conditions over the routes of the various carriers involved and irrespective of the difference in the lengths of the hauls.

We believe the questions presented by this appeal are substantial and of the utmost public importance and, therefore, urge the Court to accord to this appeal a full and complete hearing.

Respectfully submitted,

EARL B. WILKINSON,
J. ALFRED MORAN,
Attorneys for Plaintiffs in Civil No. 1072;
CARSON L. TAYLOR,
J. E. GOGGIN,
Attorneys for Plaintiff in Civil No. 1076.

Dated January 20, 1948.

APPENDIX "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

No. 1072 Civil

AYRSHIRE COLLIERIES CORPORATION, a Corporation, et al.,

vs.

THE UNITED STATES OF AMERICA, et al.

No. 1076 Civil

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA, et al.

Judgment

The above entitled consolidated causes coming on to be finally heard by the Court, and the Court having heard the evidence and argument of counsel and being sufficiently advised in the premises, now, files its memorandum, and pursuant to Rule 52 of the Rules of Civil Procedure signs and files herein its special findings of fact and states its conclusions of law thereon, which said special findings of fact and conclusions of law together with the Court's memorandum are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

Now, therefore, it is hereby ordered, adjudged and decreed that the plaintiffs' complaints be, and each is, hereby dismissed at the plaintiffs' costs.

Dated this 28th day of November, 1947.

APPENDIX "B"

Filed Nov. 28, 1947. Albert C. Sogemeir, Clerk

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF INDIANA

No. 1072 Civil

AYRSHIRE COLLIERIES CORPORATION, et al., *Plaintiffs*,

vs.

UNITED STATES OF AMERICA, et al., *Defendants*

No. 1076 Civil

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, *Plaintiffs*,

vs.

UNITED STATES OF AMERICA, et al., *Defendants*

Memorandum

These suits involve the effort of two plaintiffs to restrain the enforcement of an order of the Interstate Commerce Commission, involving coal freight rates, made after a lengthy investigation and hearing by said Commission.

The rate in controversy involves the charges for transporting coal from Southern Indiana coal mines owned by Ayrshire Collieries Corporation, to Beloit, Wisconsin, and adjacent territory.

The suits called for a three-judge District Court which was duly organized. Unfortunately the District Judge of the Southern District of Indiana, where the suit was filed, was taken ill and another judge was substituted for him before any hearing was had.

The three-judge court thus organized then proceeded to a hearing, and before the suit was decided by the three judges who had heard it, one of said three judges was taken ill. The other two judges, being in accord and being desirous of avoiding worry and work for the third, the sick

judge, entered findings of fact and conclusions and a decree in favor of defendants.

This decree was appealed to the Supreme Court of the United States where a judgment was entered reversing the decree because two judges could not dispose of the case even though the third judge was ill and could not participate. See 331 U. S. 132.

On the return of the case to the District Court, a new effort was made to create a three-judge District Court to try the suits. Counsel differed as to who could try it. Both judges who had previously heard the case were unable to aid the District Judge sitting in the District. They lived in other States. The said District Judge then summoned to his aid two other judges living in other States, who accepted the call and sat and heard the suits. They are the judges who constitute the court that decided the case and filed this memorandum.

The undersigned three judges sat and heard the evidence and arguments, and have concluded that the decree should be for the defendants in each suit. We have made findings of fact which are filed.

We have reached the conclusion that the disposition rests solely upon the existence of substantial evidence to support the findings of the Interstate Commerce Commission.

Our conclusion that there is some substantial evidence to support said findings of the Commission is based largely upon the fact that the Interstate Commerce Commission is the sole judge of the facts where there is a substantial dispute and where its findings are sufficient to support the order which it entered. In this case the sharp and controverted issue is over the existence of evidence which would support the Commission's findings increasing the rate charged for the transportation of coal by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company from Ayrshire mines in Southern Indiana to the consumption places in Beloit, Wisconsin and vicinity. In reaching our conclusion that the Interstate Commerce Commission had evidence to support its findings, we are persuaded that numerous facts must enter into the determination of a fair and reasonable rate. We are persuaded that the length of haul is not

the only factor, although it may be, in many instances, the most important one.

We are also satisfied that the Interstate Commerce Commission can and must take into consideration the existence of coal bearing areas which vary in their distances from large cities needing much coal for fuel and industry.

We are also persuaded that the Interstate Commerce Commission may take into consideration the financial needs of the carriers and the legitimate claims of coal industries in different areas.

We are likewise satisfied that the Interstate Commerce Commission must be the judge of the relative importance of the various factors that go to make up the rates, and if there be some evidence to justify the Commission's decision, we cannot disturb it.

We are satisfied that had the Interstate Commerce Commission fixed a different rate for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for hauling coal from the Ayrshire mines to Beloit, Wisconsin, or Rockford, Illinois, and adjacent areas, there would have been evidence to support such findings. In fact, we cannot say the evidence was such that no other rate but the one which the Commission made could be charged. We think it might have sustained the rate which the Chicago, Milwaukee, St. Paul and Pacific Railroad Company put into effect.

This, however, is not the question which confronts us. We cannot place our judgment against that of the Commission. Fortunately we have the I. C. C. to weigh the evidence and the relative importance of the different factors which are determinative of the weight. Undoubtedly the plaintiffs feel deeply aggrieved by the ruling of the I. C. C. They have advanced rather strong reasons for their opinions. Unfortunately, exact fairness in freight rates is never attainable. Fairness is relative. We must recognize that decisions of the I. C. C., like decisions in other Administrative Boards, are conclusive where the evidence is conflicting or capable of giving rise to different inferences.

Fortunately a late decision by the Supreme Court (New

York v. U. S., 331 U. S. 284) deals at length with a rate case. We quote therefrom:

> "The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems."

Also we quote:

> "The balancing and weighing of these interests is a delicate task."

We subscribe fully to this thought. The strength of that opinion is attested by the existence of two dissents.

(Signed) Evan A. Evans,
(Signed) Walter C. Lindley,
(Signed) Robert C. Baltzell,
Judges.

APPENDIX "C"

Filed Nov. 28, 1947. Albert C. Sogemeir, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

Civil No. 1072

AYRSHIRE COLLIERIES CORPORATION, a Corporation, et al., *Petitioners,*

vs.

THE UNITED STATES OF AMERICA, et al., *Defendants*

Civil No. 1076

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA, et al., *Defendants*

The court having heard counsel and being advised in the premises makes the following

Findings of Fact

1. Petitioners in No. 1072, except the Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other petitioners and certain other operators of coal mines in Indiana, are corporations or individuals each of whom is engaged in the operation of a coal mine in the State of Indiana, with main offices or principal places of business within the territory of the United States District Court for the Southern District of Indiana, and each of whom ships bituminous coal by railroad from said mines.

2. Petitioner in No. 1076 is a corporation, organized and existing under and by virtue of the laws of the State of

Wisconsin, with its principal offices at Chicago, Illinois, and owns and operates lines of railroad in the states of Indiana, Illinois, Wisconsin and certain other states, and is engaged in the transportation of property and persons for hire, subject to the Interstate Commerce Act.

3. On or about July 1, 1942, the railroads serving bituminous coal mines in Indiana, Illinois and western Kentucky filed with the Interstate Commerce Commission (hereinafter referred to as the "Commission") various supplements to their respective tariffs containing schedules of new interstate rates on bituminous coal from mines in Indiana, Illinois and western Kentucky to Rockford and various other destinations in northern Illinois, to become effective August 2, 1942 and later, which new rates were generally from 5 cents to 17 cents per ton higher than the rates then in effect; a few of the rates from Illinois mines were reduced. At the same time the railroads serving bituminous coal mines in Indiana, except the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (hereinafter referred to as the "Milwaukee") and the Southern Railway Company (here-after referred to as the "Southern"), also filed with the Commission supplements to their respective tariffs containing schedules of new interstate rates on bituminous coal from mines in Indiana to Beloit, Wisconsin, which new rates were 15 cents per ton higher than the new rates published to Rockford and 12 cents or 17 cents per ton higher than the then existing rates to Beloit. No new rates to Beloit were published from mines in Illinois and western Kentucky, or from mines in Indiana on the Milwaukee and the Southern, or the A. W. & W. Ry. in connection with the Southern (R. 1614-1661).

4. Petitioner, Coal Trade Association of Indiana, on behalf of its members, including the other petitioners in No. 1072, filed a complaint with the Commission on July 16, 1942, seeking the suspension of the schedules of new interstate rates from mines in Indiana and an investigation of the lawfulness of new rates contained in the said schedules (R. 131-140-A). Upon that complaint the Commission on July 30, 1942, entered an order suspending the operation of the schedules of new interstate rates con-

tained in the supplements to tariffs so filed with the Commission and ordered an investigation and hearing concerning the lawfulness of the new rates stated in the schedules of interstate rates from Indiana, Illinois and western Kentucky.

5. On September 9, 1942, upon complaint of carriers by railroad operating in the State of Illinois, the Commission entered an order for an investigation and hearing to determine whether the rates and charges for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois to Rockford and other destinations in northern Illinois caused or would cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other, or any undue, unreasonable or unjust discrimination against interstate commerce.

6. The two proceedings were heard before the Commission upon a common record and on July 9, 1945, the Commission issued its report covering both proceedings.

7. On July 9, 1945, the Commission entered an order, the subject of this proceeding, in which it recited it had filed its report finding "(1) that the said suspended schedules have not been justified because certain of the proposed rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois and to Beloit, Wis., would be unreasonable, unjustly discriminatory, or unduly prejudicial or preferential, * * * and (2) that certain of the present rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois are unjustly discriminatory and unduly prejudicial and preferential * * *"; required the railroads to cancel the proposed new interstate rates published in the suspended schedules "without prejudice to the establishment of rates on the bases approved" in the Commission's report, and required the railroads "according as they participate in the transportation * * * (1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and

preference under section 3, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference."

8. The mines in Indiana are grouped as follows: there are 30 origins in the Brazil-Clinton group, four of which are served by the Milwaukee, and the others are served variously by the C. & E. I., Pennsylvania, New York Central, B. & O. and Indiana Railroads; there are 31 origins in the Linton-Sullivan group, of which nine are served by the Milwaukee, four by the Illinois Central, and the others by the C. & E. I., Pennsylvania, New York Central and C. I. & L. Railroads; there are 29 origins in the Princeton-Ayrshire group served by the Southern, A. W. & W., New York Central, C. & E. I. and B. & O. railroads; and there are 8 origins in the Boonville group served by the Southern Railroad. The first three of said Indiana groups hereinafter are referred to as the Brazil, Linten and Princeton groups, respectively.

9. Coal shipments originating at a mine in the Brazil or Linton groups located on the Milwaukee railroad, destined to Rockford or any other point in northern Illinois on the Milwaukee, move via the single-line route of the Milwaukee. Coal shipments originating at a mine in the Linton group, located on the Illinois Central railroad, destined to Rockford or any other point in northern Illinois on the Illinois Central, move via the single-line route of the Illinois Central. Coal shipments originating at mines in the Brazil and Linton groups not located on the Milwaukee or the Illinois Central railroads, destined to Rockford or other points in northern Illinois, move via the routes of the originating carrier (a) in conjunction with one or more carriers other than the Milwaukee and the Illinois Central and (b) in some instances in conjunction with the Milwaukee or the Illinois Central. All coal shipments originating at mines in the Princeton and Boonville groups, destined to Rockford and other points in northern Illinois, move via the routes of the originating carriers in conjunction with one or more other carriers, in only some of which joint-line routings the Milwaukee or the Illinois Central participates.

10. The transportation conditions under which coal shipments are carried by the Milwaukee via its single-line from mines in the Brazil and Linton groups located on the Milwaukee to Rockford, Freeport and other points in northern Illinois and to Beloit, Wisconsin, are described in detail in the evidence of record. There is some evidence regarding the transportation conditions over the line of the C. & E. I. railroad from certain junction points in Indiana to Chicago, Illinois, a point not involved in this proceeding, but it is argued that such evidence is not sufficient to afford a basis of comparison of the transportation conditions via the single-line route of the Milwaukee with the transportation conditions via the C. & E. I. There is no evidence of record of the transportation conditions under which coal shipments are carried from mines in any of the Indiana groups located on the lines of any other railroad to Rockford or any destination in northern Illinois or Beloit, Wisconsin.

11. The evidence of record includes the rates, distances and connecting carriers via only the short or shortest tariff route from each origin in Indiana and Illinois to Rockford and such of eleven other destinations in northern Illinois and Beloit, Wisconsin, to which there are published rates from said origins. The lengths of the hauls from mines in the Brazil and Linton groups on the Milwaukee via its line to Rockford and other destinations in northern Illinois on its line are less than from the mines served by other railroads in said groups, except that from origins on the C. & E. I. in the Linton group the average distance is less, but no mines are being operated at such origins. The average distance from the origins on the Milwaukee in the Brazil group to Rockford is 237 miles and from the origins on other carriers 257 miles. The average distance to Rockford from mines in the Linton group on the Milwaukee is 270 miles, and from mines on other railroads in that group 295 miles. The difference in distance via the single-line haul from some origins on the Milwaukee in the Brazil and Linton groups and some origins on other railroads serving mines in those groups to the same destination is as great as 50 to 100 miles; for example, from West Clinton to Rockford the Milwaukee distance is 228 miles while from Center Point

on the Pennsylvania the shortest route distance is 283 miles; to Belvidere, Illinois, the single-line distance of the Milwaukee from West Clinton is 219 miles while the joint-line distance from Center Point via the shortest tariff route is 336 miles.

12. The rates of the Milwaukee and its predecessor from mines in the Brazil group in Indiana to Rockford, Freeport and other points on its line in northern Illinois have been on a parity with the rates from the Springfield group in Illinois since prior to 1913, except for the period from August 20, 1930, to June 13, 1934. In August, 1930, the intrastate rates from all Illinois origins to Rockford, Freeport and Dixon, Illinois, were reduced 17 cents per ton under an order of the Illinois, Commerce Commission; no reduction was made in any of the rates from Indiana. The Interstate Commerce Commission refused to require the intrastate rates to be increased by its decision in *Intrastate Rates on Bituminous Coal in Illinois*, and immediately after that decision, in November, 1932, the Milwaukee published rates from mines served by it in Indiana to destinations on its line in Illinois, including Rockford and Freeport, reduced by the same amounts as the Illinois intrastate rates had been reduced. These reduced rates of the Milwaukee were suspended by the Interstate Commerce Commission and, after hearing, were ordered cancelled in *Coal from Indiana to Illinois*, I. & S. Docket No. 3843, 197 I. C. C. 245, 200 I. C. C. 609, which order of the Commission was enjoined by the District Court on June 13, 1934, *Chicago, M., St. P. & P. R. Co. v. United States*, 8 Fed. Supp. 970, affirmed by the Supreme Court, *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 449. Since 1934 the rates of the Milwaukee from the Brazil group to Rockford and the other points on its line in northern Illinois have been on a parity with the rates from the Springfield group and 30 cents per ton under the rates from the Southern Illinois group.

13. The existing and proposed new rates of the Milwaukee via its single line to Rockford, the most important coal consuming point in northern Illinois, from mines served by it in the Brazil group are 17 cents per ton less than the existing and proposed new rates from mines served by other

carriers in the Brazil group, and from mines in the Linton group the existing and proposed new rates of the Milwaukee via its single line to Rockford are 12 cents per ton less than the existing and proposed new rates from mines served by other carriers in that group, except the Illinois Central which maintains and proposes to continue rates via its single line to Rockford from mines served by it in the Linton group on a parity with the rates of the Milwaukee. The existing and proposed new rates of the Milwaukee from the Brazil group mines served by it via its direct line to Rockford and intermediate points are the same as the existing and proposed new rates from mines in the Springfield group in Illinois, and are 30 cents per ton less than the existing and proposed new rates from mines in the Southern Illinois group in Illinois.

14. The distances from the various groups shown in the report of the Commission are the average of the distances from each origin point in each group via the shortest tariff routes, which means that if four railroads serve the same origin point the distance used from that point is via the carrier having the shortest route to the destination. Other average distances from the groups shown in the evidence are via the short tariff routes of each carrier serving the origin points in each group. Under the latter method, where four carriers serve an origin point, the distance via the short tariff route of each carrier is considered, while under the former method the routes via three of the four carriers, those having longer hauls, are not considered. There are other routes from practically all origins which are longer than those shown in the evidence. For example, from mines on the Pennsylvania in the Brazil and Linton groups the distances in evidence are via routes Pennsylvania to Terre Haute, Milwaukee beyond from the Brazil group, and Pennsylvania to Beehunter, Milwaukee beyond from Linton; any coal moving to Rockford or other points in northern Illinois from mines on the Pennsylvania actually moves via the Pennsylvania to Chicago and thence via the Northwester, Illinois Central or Milwaukee from Chicago to destinations.

15. In 1942, of the coal moving from mines in the Brazil group to Rockford 95 per cent moved via the Milwaukee railroad, and 78 per cent of the coal from the Linton group to Rockford moves via the Milwaukee. The movement of coal from mines in the Linton group on the Illinois Central which maintained rates on a parity with those of the Milwaukee is not shown, but little, if any, coal moved to Rockford from mines in the Linton group on lines other than the Milwaukee and Illinois Central.

16. Rockford is the largest market for coal in the destination territory involved. In 1941, Illinois mines shipped 568,872 tons of coal to Rockford and six other points in Illinois here involved, of which 276,101 tons went to Rockford and 292,771 tons went to the other six points. In 1941, Indiana shipped 211,561 tons to Rockford and 57,146 tons to the other six points. In 1936, Indiana shipped 51,347 tons of coal to Rockford and 70,021 tons to the other six points; Illinois shipped 208,028 tons to Rockford and 338,793 tons to the other six points. To Beloit, Wisconsin, the mines in Illinois shipped 80,100 tons of coal in 1941 and the Indiana mines shipped 51,450 tons. The evidence does not show from what groups coal moved in 1936. The decision of the Supreme Court affirming the decree of the District Court enjoining the order of the Commission requiring cancellation of the Milwaukee's rates from the Brazil group on a parity with the Springfield group rates was entered in March, 1935.

17. Dixon uses more coal than any of the seven points in Illinois other than Rockford. Illinois shipments to Dixon increased 1941 over 1936; Indiana shipments decreased materially. To the six other points as a whole Illinois lost 46,022 tons or 13 per cent, 1936 compared to 1941; Indiana lost 13,000 tons or 18 per cent. To those six points the Illinois mines under the existing rates shipped five cars of coal for each car from Indiana. At Rockford, where the rates of the Milwaukee and Illinois Central from Indiana mines maintained the standard relationship with Illinois rates, Indiana was able to ship 211,000 tons; while Illinois shipped 276,000 tons.

18. These proceedings before the I. C. C. involved the entire existing and proposed increased rate structure and relationships of rates on bituminous coal from all mines and mine origin groups in Illinois, Indiana and Western Kentucky to Beloit, Wisconsin, and to ascertain whether any of the existing or proposed increased rates or rate relationships were or would be unreasonable, unduly preferential, prejudicial, or unjustly, discriminatory in violation of the provisions of the Interstate and Illinois Commerce Acts.

19. The Commission contends that freight rate structures on bituminous coal in the United States have not been based on the distances involved from individual mines to specific destinations. Competition among mines in the same area producing substantially the same quality of coal, the need for more even development and fuller production of such mines, the competition of railroads serving such mines and the need of consumers for a wide choice of sources of supply early led to the practice of blanketing or grouping rates whereby all mines in a particular area or group—often of wide extent—are accorded the same rate when shipping to the same destination generally, irrespective of differences in distances over the particular single or joint line railroad routes used from the various mines in the respective groups. This well recognized characteristic of coal rate structures has for many years applied with respect to the rates on coal from the Illinois, Indiana and Western Kentucky mines and mine origin groups to destinations in northern Illinois, Wisconsin and Iowa. Such mines have been divided into groups for rate-making purposes with the same rate generally applicable from all mines in a given group to a given destination, irrespective of whether the transportation was over a single or joint line route, and generally irrespective of the differences in distance from the variously located mines in such groups to such destinations.

The mines in Illinois are divided into 8 major groups, namely, the Northern Illinois, Fulton-Peoria, Danville, Springfield, Centralia, DuQuoin, Bellsville, and Southern Illinois groups, those in Indiana into 4 major groups, namely, the Brazil-Clinton, Linton-Sullivan, Princeton-

Ayrshire, and Boonville groups, and there is one group of considerable extent in Western Kentucky. The Brazil-Clinton, Linton-Sullivan, and Princeton-Ayrshire groups will hereinafter be referred to as the Brazil, Linton, and Princeton groups, respectively. The geographical location and boundary of these groups are shown on the map, Exhibit No. 1, in the proceeding before the Commission.

20. As the result of the establishment of group rate adjustments, *a system of rate differentials* or differences in the rates applying from the respective groups in the adjustment has arisen. These differentials are usually constructed with reference to a particular base group, that is, the rates from the base group are usually constructed upon the basis of the average mileages from all origins or mines in such group and the application of a distance scale to such mileage while the rates from the farther distant groups are determined by adding to the rate from the base group differentials or rate differences which take into consideration not only the average difference in distance between all of the origins or mines in the base group and those located in the differentially related groups to the destination involved, but more particularly other factors such as competitive conditions and comparative tonnages shipped. Prior to the last decade the Southern Illinois group, the most southerly in Illinois, was considered the base group for the adjustment of rates and differentials from the other Illinois groups which are located north thereof. However, during the last decade the Fulton-Peoria group in northwestern Illinois, which has materially increased its production and which is in more nearly the same geographical position as the Brazil or base group in Indiana with respect to destinations in northern Illinois, Iowa, and Wisconsin, has been considered by the Commission as the base group for the rates from the other groups in Illinois.

In the instant proceedings, the Commission used the Brazil group as the base for the other groups in Indiana and the Fulton-Peoria group as the base group for the other groups in Illinois and attempted to prescribe a comparable level of rates from such two base groups to the destinations involved.

The average level of the rates prescribed by the Commission from the Fulton-Peoria group to the 12 destinations in northern Illinois, are on a higher level as measured by the coal mileage rate scales used than the rates prescribed by it from the Brazil group.

21. The rates and differentials on bituminous coal from and between the Indiana groups, and from and between the Indiana groups on the one hand and the Illinois groups on the other to Beloit, in effect prior to the Commission's decision herein, had been established and frequently changed by voluntary action of the various railroads and they had never been fixed or prescribed by the Commission. Such rate and differential adjustment has been the subject of controversy and litigation for a period of over 20 years.*

22. On July 19, 1925, the railroads serving the four mine origin groups in Indiana voluntarily reduced their rates to Rockford, Illinois, in amounts ranging from 5 to 28 cents per ton, to Freeport, Illinois, in amounts ranging from 11 to 28 cents per ton, and to Dixon, Illinois, in amounts ranging from 30 to 36 cents per ton. No reductions were made in the rates from the Illinois mines to such destinations at that time. In 1930, the railroads apparently without any objection from plaintiffs or any Indiana coal producer, reduced the rates from all mines, except one, for the purpose of according such mines the Princeton instead of the Boonville group basis of rates.

---

* At p. 56 of its exceptions to the proposed report issued by the examiner of the Commission, plaintiff, Coal Trade Association of Indiana, stated:

"The record shows that the relationship in the rates between the Illinois and Indiana groups to the destinations in Northern Illinois * * * has been almost constantly before the Commission or before conferences of carriers and shippers, and that *the present chaotic condition is a constant source of litigation before the Commission*" (Emphasis supplied).

At p. 57 of such exceptions it stated:

"In view of that statement and of the facts appearing of record in this case *it is improper to refer to the chaotic rate situation prevailing to destinations in Northern Illinois as a 'long existing relation'*" (Emphasis supplied).

No corresponding reductions were made in the rates from the Illinois mines. Acting upon complaints filed with it, the Illinois Commerce Commission in 1930 required the rates from the Illinois groups to Rockford and Freeport to be reduced 17 cents per ton, and the rates from certain Illinois groups to Dixon to be reduced 14 cents per ton, which offset but partially the reductions made from the Indiana mines. Shortly thereafter, the Interstate Commerce Commission, acting upon a complaint filed by the railroads, instituted an investigation into the lawfulness of the intrastate rates on coal from the Illinois mines to Rockford, Freeport, and Dixon, under Section 13 (3) (4) of the Interstate Commerce Act, but refused to require such rates to be increased (*Intrastate Rates on Bituminous Coal in Illinois*, 182 I.C.C. 537, 564, decided March 8, 1932).

It found such intrastate rates to be below the level applicable in the territory involved, it also found that it would be improper to require an increase in the rates from the Illinois mines to such destinations unless and until the rates from the Indiana mines to such destinations, which were on a lower level than those in effect from the Illinois mines, were increased to a level more commensurate with the general level of the rates on bituminous coal in such territory.

Thereafter, by schedules filed to become effective December 23, 1932, the Milwaukee, which serves 4 of the 30 origins in the Brazil and 9 of the 31 origins in the Linton Indiana groups and certain destinations in Northern Illinois, such as Rockford and Freeport, with its own line, proposed reductions of 17 cents per ton in the rates over its single line route from such origins to such destinations. The schedules containing these reduced rates were suspended by the Commission and after hearing were ordered cancelled. (*Coal from Indiana to Illinois*, 197 I.C.C. 245, 200 I.C.C. 609.) The Commission's order, however, was enjoined by the District Court (CMStP&P. R. Co. *v.* U. S., 8 Fed. Supp. 970) and the decision of such court was affirmed by the Supreme Court in United States *v.* C. M. St. P. & P. R. Co., 294 U. S. 449, on the ground, among others, that such order was not supported by substantial evidence or adequate findings.

23. The substantially lower rates established in 1934 via the Milwaukee from origins on its line only in the Brazil and Linton groups and by the Illinois Central in 1936 from origins on its line to northern Illinois destinations, resulted in disputes and complaints which brought on this hearing before the I.C.C.

24. The vital questions involved were whether the proposed reduced rates of the Milwaukee via its single line routes from origins served by it in the Brazil and Linton groups to Rockford, Freeport, and the intermediate destinations on its line in Northern Illinois were or would be unreasonable in violation of Section 1(5) of the Interstate Commerce Act, in that they would be too low, and whether such rates, if permitted to become effective, might precipitate reductions in the rates of other railroads serving mines in Illinois, Indiana, and Western Kentucky which would result in the establishment of rates so low as to impair the revenues of such railroads to such an extent that it would menace the maintenance of an adequate and efficient transportation system, in violation of Section 15(a) (2) of the Act.

The question of whether the existing and proposed lower rates via the single line route of the Milwaukee from origins served by it in the Brazil and Linton groups to Beloit and the Northern Illinois points involved, and via the single line route of the Illinois Central from origins served by it in the Linton group to such Northern Illinois points were or would be relatively unreasonable in comparison with the rates from other mines and origin groups in Indiana, Illinois and Western Kentucky, and were or would be unduly preferential of mines or origins served by such railroads in the Brazil and Linton groups and unduly prejudicial to mines or origins served by other railroads in such groups and other groups in Indiana from which the Milwaukee and Illinois Central participate in joint rates and joint routes, in violation of Section 3(1) of the Act, and unjustly discriminatory in violation of Section 2 of the Act, was squarely presented to the Commission for decision for the first time in the instant proceedings.

25. The I. C. C. conducted a comprehensive hearing and investigation with respect to the lawfulness of the existing and proposed rates from, and rate relationships between the mines and mine origin groups in Illinois, Indiana, and Western Kentucky to Beloit, Wisconsin and the various destinations in Northern Illinois involved, which were maintained or proposed by the various railroads serving such mines or origin groups and such destinations, and those participating as intermediate and delivering carriers, and made findings and conclusions thereon with respect to the fair and lawful rates and rate relationships which it prescribed to be established and maintained for the future by such railroads from and between all of such mines and origin groups to the destinations involved in such proceedings are supported by substantial evidence and are predicated upon a rational basis.

26. The parties proceeded throughout the hearings before the Commission with full recognition of the fact that the lawfulness of all of the existing and proposed increased rates were in issue.

27. Plaintiffs' contention that the Commission acted arbitrarily and capriciously and did not give sufficient consideration to the factor of distance in prescribing a slightly higher rate from the Brazil than from the Springfield group to Rockford and Beloit to which the mileages from such groups are comparable.

28. The real and only controversy is whether there is any substantial evidence to support the I. C. C. findings and justified it in fixing the coal rates as it did.

We find that a different rate would have been justified. We are not able to say that the record is devoid of all evidence which would support the findings it made. There are numerous factors which the I. C. C. should consider in determining the coal freight rates and the weight which should be given to each factor must be determined by the I. C. C. and we are not justified in disturbing the weight thus given to each and all said factors unless clearly contrary to, or wholly unsupported by the evidence.

CONCLUSIONS OF LAW

(1) The findings of the Commission are supported by substantial evidence.

(2) The Prayer of plaintiff must be denied and the suits dismissed.

(Signed) EVAN A. EVANS,
(Signed) WALTER C. LINDLEY,
(Signed) ROBERT C. BALTZELL,
Judges.